

DAVID BURCHARD
CHAPTER 13 TRUSTEE
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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION**

In re:

JESUS AVILA-ORTEGA
2325 ORLEANS ST
SANTA ROSA, CA 95403

###-##-6392

Debtor(s).

Case No.: 10-1-2397AJ13
Chapter 13

THIRD AMENDED NOTICE BY DAVID
BURCHARD, CHAPTER 13 TRUSTEE, OF
CHAPTER 13 PLAN DEFICIENCIES

CONFIRMATION HEARING:

Date: 11/1/2010
Time: 1:30 PM
Place: United States Bankruptcy Court
99 South E Street
Santa Rosa, CA 95404

DAVID BURCHARD, Chapter 13 Trustee in the above-entitled action, cannot recommend Confirmation of the Chapter 13 Plan proposed hereunder by Debtor(s) for the following reason(s).

1. Sections 3 and 4 A) of the debtor's plan propose monthly payments totaling \$170.06, while the plan payment is \$188.00. The Trustee is unable to administer this provision and requests that debtor's counsel amend the plan.
2. Debtor has not listed in Section 2 of an Adequate Protection Payment for the secured personal property claim of Wffinancial, as listed in Schedule D. 11 U.S.C. §1326(a)(1)(C) provides that "debtor shall commence making payments....in the amount.....that provides adequate protection directly to a creditor holding an allowed claim secured by personal property.....". The Trustee requests that debtor's counsel file an amended plan providing for adequate protection payments on all secured personal property debt.
3. Section 11 of the plan indicates the lien held on real property by Bank of America shall be voided. The Trustee requests that debtor's Motion to Avoid Lien is filed and resolved prior to confirmation.
4. Schedule I fails to list the name and address of the debtor's employer. The Trustee requests that debtor's counsel amend Schedule I and provide this omitted information.
5. Schedule I lists the non-filing spouse's self-employment income on line 1. The Trustee requests that debtor's counsel amend Schedule I and list this income on line 7. Additionally, the Trustee requests that debtor's counsel provide the dba of the non-filing spouse.

6. Schedule J reflects that real property taxes and insurance are not included in the mortgage payment. There is no provision in this schedule for these expenses. The Trustee requests that debtor's counsel amend Schedule J and provide this omitted expenses.
7. The Trustee has been provided with a profit and loss statement from the non-filing spouse, however, it fails to provide income received in **December 2009**. The Trustee requests that debtor's counsel provide this missing information.
8. The Trustee has been provided with bank statements from the non-filing spouse for the months of July through September. The Trustee requests that the non-filing spouse provide bank statements for **December 2009 through May 2010**.
9. The Trustee has been provided with debtor's profit and loss statement for the months of July 2010 through September 2010. The Trustee requests that debtor's counsel provide a profit and loss statement for **December 2009 through May 2010**.
10. At the 341 Meeting of Creditors, the debtor indicated he receives room rental in the amount of \$850.00 per month. Not only does Schedule I fail to list this income, the Trustee has been provided with 2 separate rental agreements, one with Daniel Avila and one with Miguel Flores indicating total rents received as \$1,350.00. The Trustee requests that debtor's counsel amend Schedule I and provide this omitted information.
11. The plan does not meet the requirements of 11 U.S.C. § 1325(d), as the plan payment is insufficient to pay all secured, priority and administrative debts, and therefore, the plan is not feasible. The source of the non-feasibility appears to result from the following factor: The plan does not indicate that pre-petition arrearages are due Chase Home Finance, however, said creditor has filed a secured proof of claim listing arrearages in the amount of \$42,771.83. The Trustee requests that debtor's counsel amend the plan to pay this claim, or, in the alternative, file an objection to said claim.

PLEASE TAKE NOTICE that, without prior notice, at the above-referenced confirmation hearing date assigned to your Chapter 13 case, the Court may DISMISS the above-referenced case upon making a determination that Debtor(s) has/have not presented a feasible Plan, Debtor(s) has/have not made the required payments under the Plan, Debtor(s) has/have violated the statutory debt limitations set for a Chapter 13 case, Debtor(s) has/have not filed this proceeding in good faith, Debtor(s) has/have not provided documents and/or Schedules and Plan as required under the Bankruptcy code, and/or Debtor(s) has/have not provided the Trustee with Payment Advices or Declarations.

Dated: October 26, 2010

DAVID BURCHARD

DAVID BURCHARD, Chapter 13 Trustee

Certificate of Mailing

I, WENDY KARNES, the undersigned, certify that:

I am over the age of 18 years and not a party to this action. I am employed by the Trustee whose business address is 393 Vintage Park Drive, Suite #150, Foster City, CA. On the date set forth below, I served a copy of the NOTICE BY DAVID BURCHARD, CHAPTER 13 TRUSTEE, OF CHAPTER 13 PLAN DEFICIENCIES, and this Certificate of Mailing, on the persons listed below by following our ordinary business practice for service, which is either deposited in the ordinary course of business with the U.S. Postal Service by first class mail or served by electronic transmission from the Court, if applicable. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

JESUS AVILA-ORTEGA
2325 ORLEANS ST
SANTA ROSA, CA 95403

EVAN LIVINGSTONE
LAW OFFICES OF EVAN LIVINGSTONE
P O BOX 6107
SANTA ROSA, CA 95406-0000

United States Trustee
235 Pine Street, Suite 700
San Francisco, CA 94104

Dated: October 26, 2010

WENDY KARNES
WENDY KARNES